



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

August 31, 2012

Ms. Karina Cardoza  
Director  
Public Affairs Division  
Hidalgo County Commissioner's Court  
1615 South Closner Boulevard, Suite B  
Edinburg, Texas 78539

OR2012-13843

Dear Ms. Cardoza:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 463639 (PIR # 2012-172).

The County of Hidalgo (the "county") received a request for electricity bills, ESI numbers, and end dates for a contract. Although the county takes no position on the release of the submitted information, you state it may contain proprietary information subject to exception under the Act. Accordingly, you notified Direct Energy (CPL) ("Direct"), Magic Valley Electric Cooperative ("Magic Valley"), and Reliant Energy Retail Services, L.L.C. ("Reliant"), of this request for information and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). Further, you also notified the Texas General Land Office (the "GLO") of the request for information and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should

not be released). We have reviewed the arguments submitted by an attorney for Reliant and the submitted information, a portion of which you state constitutes a representative sample.<sup>1</sup>

Initially, you state, and we agree, the submitted contract in Exhibit F was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-07366 (2012). In this ruling, we determined the county may withhold the submitted contract under section 552.104 of the Government Code. There is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, we conclude the county may continue to rely on that ruling as a previous determination and withhold the previously ruled upon information in accordance with Open Records Letter No. 2012-07366.<sup>2</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider the arguments submitted against disclosure of the information in Exhibit E, which was not encompassed by the previous ruling.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Direct or Magic Valley explaining why their information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the remaining information would implicate these third parties' interests. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, we conclude that the county may not withhold any of the remaining information on the basis of any interest Direct or Magic Valley may have in the information.

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>2</sup>As our ruling is dispositive, we need not address Reliant's arguments against disclosure of the information in Exhibit F.

We understand Reliant to raise section 552.110 of the Government Code for its pricing information in Exhibit E. Section 552.110 protects (1) trade secrets and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. Gov't Code § 552.110. Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure information that is trade secrets obtained from a person and information that is privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); *see also* ORD No. 552 at 2. Section 757 provides a trade secret to be as follows:

[A]ny formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees . . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (citation omitted); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret, as well as the Restatement's list of six trade secret factors.<sup>3</sup> *See* RESTATEMENT OF TORTS § 757 cmt. b (1939). This office

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<sup>3</sup>There are six factors the Restatement gives as indicia of whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2, (1982), 306 at 2 (1982), 255 at 2 (1980).

must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Reliant argues its pricing information constitutes trade secrets. We note pricing information pertaining to a particular proposal or contract is generally not a trade secret because it is “simply information as to single or ephemeral events in the conduct of the business,” rather than “a process or device for continuous use in the operation of the business.” RESTATEMENT OF TORTS § 757 cmt. b (citation omitted); *see also Huffines*, 314 S.W.2d at 776. Upon review, we find that Reliant has failed to demonstrate that any of its information in Exhibit E meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. Accordingly, the county may not withhold any of the information in Exhibit E under section 552.110(a).

Reliant also contends its pricing information is commercial or financial information, release of which would cause substantial competitive harm to Reliant. However, we find that Reliant has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its information at issue would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). We note the pricing information of winning bidders of a government contract is generally not excepted under section 552.110(b). Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see* ORD 319 at 3 (information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing is not ordinarily excepted from disclosure under statutory predecessor to section 552.110). *See generally* Dep’t of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is cost of doing business with government). Moreover, we believe the public has a strong interest in the release of prices in government contract awards. *See* ORD 514.

We therefore conclude that the county may not withhold any of the information in Exhibit E under section 552.110(b).

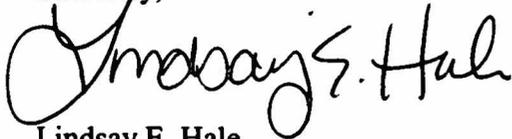
We note portions of the remaining information are subject to section 552.136 of the Government Code.<sup>4</sup> Section 552.136 states, "Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). Upon review, we conclude the county must withhold the utility account numbers we have marked in Exhibit E under section 552.136.

In summary, the county may continue to rely on Open Records Letter No. 2012-07366 as a previous determination and withhold the previously ruled upon information in Exhibit F in accordance with that ruling. The county must withhold the utility account numbers we have marked in Exhibit E under section 552.136 of the Government Code. The county must release the remaining information in Exhibit E.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 463639

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Carrie Collier-Brown  
For Reliant Energy Retail Services, L.L.C.  
Winstead  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701  
(w/o enclosures)

Ms. Ashley Allen  
Staff Attorney  
Administrative Law Section  
Texas General Land Office  
1700 Congress Avenue, Suite 910  
Austin, Texas 78701  
(w/o enclosures)

Ms. Shari Hunt  
Staff Attorney  
Legal Services Division  
Direct Energy (CPL)  
12 Greenway Plaza, Suite 250  
Houston, Texas 77046  
(w/o enclosures)

Mr. Ruben Pena  
Attorney  
Magic Valley Electric Cooperative  
2900 Central Boulevard, Suite B  
Brownsville, Texas 78520  
(w/o enclosures)